

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

10/1/2021

2. Department

Department of Fair Employment & Housing (DFEH)

3. Organizational Placement (Division/Branch/Office Name)

Executive Programs

4. CEA Position Title

Assistant Deputy Director - Quality Assurance and Reporting

5. Summary of proposed position description and how it relates to the program's mission or purpose.
(2-3 sentences)

Position will report to the appointed Deputy Director of the Executive Programs Division and have overall responsibility for the department's Quality Assurance and Reporting program, including administrative appeals and Public Records Act requests, reports to federal counterparts, responses to external stakeholders and investigation of internal EEO complaints. This position will have an enterprise-wide impact and an increased level of responsibility as the department continues to grow in the number of positions and locations.

6. Reports to: (Class Title/Level)

Deputy Director/Appointed

7. Relationship with Department Director (*Select one*)

- ☐ Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- ☒ Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(*Explain*):

Reports to Deputy Director of Executive Programs Division (appointed), and provides oversight of administrative appeals and Public Records Act requests, reports to federal counterparts, responses to external stakeholders, and investigation of internal EEO complaints.

8. Organizational Level (*Select one*)

☐ 1st ☐ 2nd ☒ 3rd ☐ 4th ☐ 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

The Assistant Deputy Director of Quality Assurance and Reporting will report to the appointed Deputy Director of the Executive Programs Division and have overall responsibility for the department's administrative appeals and Public Records Act requests, reports to federal counterparts, responses to external stakeholders and investigation of internal EEO complaints, among other duties. This position will have an enterprise-wide impact and an increased level of responsibility as the department continues to grow in the number of positions and locations.

Directs the operations of the Quality Assurance and Reporting Unit. Establishes, reviews, and, as needed, revises policies and procedures to ensure the Unit functions accurately, expeditiously, and efficiently in accordance with the law and department priorities and objectives. Identifies and implements technological or other systems to improve unit outcomes, including accuracy, timeliness, and efficiency. Manages and provides guidance to supervisors and other high-level staff in the unit. This includes providing ongoing feedback and coaching to employees under supervision and conducting annual performance reviews. Ensures staff within the unit have the information, training, and tools they need to effectively meet goals and priorities. Develop budget plans to support the unit and ensure the cost-effective use of resources and staff in carrying out unit objectives and priorities. As needed, prepare Budget Change Proposals, develop contract proposals, review and approve procurement/contract documents, and oversee negotiation and administration of vendor and consultant contracts and service agreements.

Provides legal, policy, and programmatic expertise to the unit's appeals and reporting section, Public Records Act section, and EEO and other functions. Stays abreast of legal and policy developments impacting the department and its mission, including through trainings, reviewing court decisions, and analyzing legislation or regulations. Reviews and approves the department's handling of the most complex and/or sensitive appeals, public records requests, and EEO matters. Works with department executives and leadership to ensure public records requests are processed according to the Public Records Act and department policy. Ensures the appeals and reporting section provides periodic useful feedback to other divisions, such as the Enforcement Division to assure individual investigations and divisional practices meet or exceed department quality standards, including compliance with the Fair Employment and Housing Act and its implementing substantive and procedural regulations.

Serves as a representative of the Executive Programs Division internally, such as on the department's change management and disability advisory committees, and serves as a representative of the department externally. Conducts internal and external presentations and trainings and may serve on inter-agency task forces. Ensures accurate and timely: reporting to department executives, reporting to federal counterparts, responses to citizens' complaints, and responses to inquiries from the Governor's Office, the Business, Consumer Services, and Housing Agency, other state entities, federal or local agencies, legislators, and other external stakeholders. Provides feedback to the department from external stakeholders. Evaluates department activities and identifies and works with department leadership to implement improvements, as needed.

Acts as liaison to federal Equal Employment Opportunity Commission (EEOC), ensuring that annual contracts for work performed on behalf of EEOC are executed and tracked. Manages upward and downward modifications in cases assigned and federal funds disbursed to verify expenditures. Stays abreast of current EEOC regulations and guidelines to ensure compliance.

Leads or serves in a leadership role in priority projects of the department, such as: working with the Information Technology Services Division to identify and implement improvements or required changes to the department's case management system; working with department leadership to identify and implement ways to make the department more accessible to individuals with limited or no English proficiency or with disabilities; working on the department's pay data reporting program; or preparing analyses of legislation or regulations impacting the department.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- ☒ Program is directly related to department's primary mission and is critical to achieving the department's goals.
- ☐ Program is indirectly related to department's primary mission.
- ☐ Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The Executive Programs Division is directly and critically related to both the Department's primary mission and achieving its goals. The DFEH receives, investigates, conciliates, mediates, and prosecutes complaints of alleged violations of the FEHA, Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. Each year, the Department receives in excess of 23,000 complaints of discrimination. It also receives hundreds of requests per year for information about the civil rights laws the Department enforces.

At the core of the DFEH's mission is reducing the occurrence of civil rights violations by reviewing and ruling on administrative appeals of enforcement cases and responding to Public Records Act requests, both of which improve Californians' understanding of their rights under the state's civil rights law. This core function resides within the Executive Programs Division, which handles all external-facing functions of the Department, including administrative appeals, Public Records Act requests, Equal Employment Opportunity complaints, outreach and education, legislative and regulatory analysis, and training of state employees regarding their civil rights responsibilities.

Through all of these activities, the Division raises awareness of civil rights laws, and ultimately supports the goal of achieving a California free of discrimination.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The creation of this existing CEA position is being requested due to a sharp increase in the complexity and volume of administrative appeals and Public Records Act requests, among other workloads. Increased workloads, new state laws, new programs and increased complexity of complaints being received create an opportunity to create an appropriate level of leadership and oversight.

Each year the number of complaints submitted and accepted by DFEH increases. In 2018 DFEH received 27,840 complaints with 5,395 investigations opened; in 2019 DFEH received 28,739 complaints with 6,600 investigations opened; in 2020, DFEH received 28,897 complaints, with 7,235 open investigative cases. The growth of the program is attributed to heightened media focus on high profile sexual harassment allegations as the #MeToo Movement has increased awareness and new laws passed by the California Legislature increasing civil rights protections such as the Fair Chance Act (AB 1008), the CROWN Act (SB 188), and the SHARE Act (AB 9) which extended the statute of limitations to file an employment discrimination complaint from 1 to 3 years. At this time, DFEH plays a more critical role in civil rights enforcement than ever. This transformative moment leaves DFEH as one of the only options available for strategic enforcement actions. Targeting resources to areas in which the federal government and the private bar are less capable of prosecuting, such as systemic litigation and strategic enforcement, is the current priority of many state and local government enforcement agencies. Without that shift, Californians will be more vulnerable to civil rights violations.

DFEH's strategic vision is a California free of discrimination. As the volume of complaints trends up, efforts to prevent discrimination must be strategic, targeted, and forward looking. The Executive Programs Division and the department have grown to meet this challenge. DFEH added 36.7 positions in FY 2020-21 and an additional 32 positions in FY 2021-22. Over these two fiscal years, the Executive Programs Division added 12 additional positions for an 85% growth rate alone in order to support its workloads, and to support additional complaints generated by new laws. These include Senate Bill (SB) 329, which prohibits landlords from asking tenants about their "source of income" to prevent housing discrimination, SB 973, which required DFEH to create an additional online portal and allow employers of 100 or more employees to submit pay data to the department annually in order to identify wage patterns and allow for targeted enforcement of equal pay or discrimination laws, an expansion of the California Family Rights (CFRA) Act under SB 1383, and the creation of fair housing testing programs during the COVID pandemic.

DFEH has also received approval for new offices and leases in areas which the department experiences the highest numbers of complaint submissions, including Oakland and Riverside, which will require appeals, Public Records Act and EEO expertise to staff.

Due to these ever-increasing staffing levels, additional programs, projects and policy work, DFEH requests approval for a new CEA designation for its Assistant Deputy Director - Quality Assurance and Reporting unit position with a CEA B at \$12,341.00 monthly, and a corresponding increase in the department's salary cap.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The Assistant Deputy Director - Quality Assurance and Reporting CEA is the principal policy maker over several specific critical programs. Examples include:

- 1) Administrative Appeals - If a party is dissatisfied with the outcome of a DFEH investigation, and the case has not been settled or accepted by DFEH to file a lawsuit in court, that party may appeal DFEH's closure of the case. Complainants must clearly state what they specifically want reviewed during the appeal. For example, whether DFEH was unable to interview all witnesses or gather certain evidence, complainants must provide identities and contact information in order to identify potential evidence that they believe may have been overlooked. Or, if they believe that DFEH misapplied the law, the appeal should describe what the complainant understands the law to be. An appeal is not an opportunity to re-do an investigation and all requests are reviewed to determine if a case should or should not be reopened for appeal. Complainants are strongly encouraged to seek the advice of an attorney to explore their legal options, and are advised to not wait until the appeal process has ended to decide if they will file a civil lawsuit, as the appeal process may not pause the statutory time limits for court filings.
- 2) Public Records Act Requests/Responses - DFEH records are subject to the California Public Records Act. Under this law and applicable legal privileges, certain categories of records are available to the public and others are exempt from public disclosure. Generally, DFEH will not release records or information about specific open cases or those that remain under investigation. The Custodian of Records holds complaint records for three years. Within 10 days after a request is received, DFEH will confirm if it has the records and what the cost to complete the request will be. In some instances, the department may require more time or may seek more information from the requestor in order to process the request. Public records in electronic form will be released in the format in which they are held. If a record exists in both electronic and hard copy formats, requesters can select to receive either. Emailed records have no associated cost, however there is a fee of 10 cents per page for hard copies of public records, plus mailing costs. A fee of \$24 per hour may also apply if a request required DFEH to compile records or extract information from an electronic record or undertake programming to satisfy a request, which are all subject to legal scrutiny and challenge.
- 3) Equal Employment Opportunity - DFEH ensures its employees that the department is committed to providing a professional work environment free from discrimination and harassment, including discrimination and harassment based on a protected characteristic, and an environment free from retaliation for participating in any protected activity. DFEH is committed to providing equal employment opportunities to all employees and applicants for employment. Accordingly, DFEH has adopted and maintains an anti-discrimination policy designed to encourage professional and respectful behavior and prevent discriminatory and harassing conduct in the workplace. DFEH will implement appropriate corrective action(s), up to and including formal discipline, in response to misconduct—including violations of DFEH's anti-discrimination policy—even if the violation does not rise to the level of unlawful conduct. DFEH prohibits discrimination and harassment based on the following characteristics: race, color, caste, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, 1medical condition), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other characteristic protected by state or federal anti-discrimination law covering employment. In addition, DFEH prohibits retaliation against a person who engages in activities protected under this policy. Reporting, or assisting in reporting, suspected violations of this policy and cooperating in investigations or proceedings arising out of a violation of this policy are protected activities under this policy. All DFEH employees are expected to assume responsibility for maintaining a work environment that is free from discrimination, harassment, and retaliation. Employees are encouraged to promptly report conduct that they believe violates this policy so that DFEH has an opportunity to address and resolve any concerns. Managers and supervisors are required to promptly report conduct that they believe violates policy. DFEH is committed to responding to alleged violations of this policy in a timely and fair manner and to taking appropriate action aimed at ending the prohibited conduct.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The Assistant Deputy Director - Quality Assurance and Reporting serves as the department's premier appeals, Public Records Act compliance, EEOC liaison, and EEO policy expert. The primary function of the position is to create and execute policy-making decisions and to assist with ensuring proper oversight and administration of the department's vast and critical Quality Assurance program.

The CEA will report to the Deputy Director of Executive Programs, a gubernatorial appointee and will have decision-making authority for the Supervisor as directed. This position will provide strategic counsel on department and statewide policies and provide information and recommendations to higher levels within the Executive Programs Division and the Executive Team. The CEA will work directly with the Governor's Office, Agency and other Agency departments on many issues in lieu of the Supervisor. Decisions with enterprise-wide impact or involving high visibility matters of interest to the enterprise as a whole will continue to be raised to a higher level within the division.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

Yes, the CEA position will be developing and implementing new policy, and interpreting and implementing existing policy. The incumbent must gain an understanding of existing policies and business procedures that impact the appeals and Public Records Act programs, external EEOC liaison activities, the internal EEO program, and all of the regulations that relate to the case types that their team will be responsible for. They must also be aware of new laws that have been passed and that are being proposed by the California Legislature. They would work with the Department's Executive Team, their peers and staff in other Divisions (Enforcement, Legal, Information Technology, Dispute Resolution and Administration), and their team members (subordinate staff) to establish the best policies for the Department. The incumbent must also be forward looking and be aware of what's on the horizon to ensure they are creating policies and procedures that are easily updated.